S.B. Civil Writ Petition No.3973/04

25.01.2007

Hon'ble Mr. Justice Mohammad Rafiq

Mr. Sudesh Bansal , Advocate for petitioner.

Mr. Vigyan Shah, Advocate for respondent.

This writ petition has been filed against the order dated 13.5.2004 by which the learned Tribunal rejected the application dated 14.10.2003 filed by the plaintiff petitioner.

The facts of the matter are that the petitioner has filed a Civil suit for declaration and permanent injunction on 18.12.2001 against the defendant respondent. While defendant no.1 filed a written statement on 19.9.2002 the matter was proceeded ex-parte against the defendant no.2 and 3 and after

adjournment on various dates finally the issues were framed on 24.2.2003. The matter was then posted for evidence of the plaintiff on 16.4.2003, then on 9.7.2003 and thereafter on 23.8.2003. Evidence of the plaintiff was closed when he failed to appear for evidence on 18.9.2003. The petitioner then filed an application giving reasons for his non appearance on earlier dates. The Director of the petitioner company then filed an application on 14.10.2003 with the request that the Court should take their evidence by affidavits on record. Learned trial court on request of the defendant adjourned the matter on 3.11.2003 for the purpose of receiving their reply. Then the matter was again adjourned on various dates and finally arguments were heard on the application

dated 30.4.2004. The application was then rejected on 13.5.2004. It is this order which is under challenged in the present petition.

I have heard Mr. Sudesh Bansal learned counsel for the petitioner and Mr. Vigyan Shah learned counsel for the respondent.

Mr. Sudesh Bansal, learned counsel for the petitioner argued that the plaintiff petitioner could not be appeared before the Court on account of the fact that he had to remain out of country in connection with his business in as much as when he offered to adduce his evidence on affidavit as examination in chief, the learned trial court has taken a hyper-technical view in not accepting his request. The limit of three adjournments as provided for by Order 17

Rule 1 has to be construed liberally keeping in view the facts of the case. Even if the Court granted three adjournments in the past, at least one more date for the purpose of taking the evidence on record should have been allowed particularly when the plaintiff was prepared to produce affidavits of all his witnesses whom he proposed to examine to be taken on record as the examination in chief. The Court grant opportunity of cross examination to the defendants. Such a power is very much available with the Court u/s. 148 C.P.C.

On the other hand learned counsel for the respondent Mr. Vigyan Shah submits that the petitioner in spite of being allowed number of opportunities failed to produce either himself or any other witnesses in his evidence. He

cannot be now at this stage, allowed to produce evidence and the learned trial court has rightly closed the evidence and application to reopen the evidence has rightly been rejected by the learned trial court by this impugned order.

I have given by thoughtful consideration to the arguments advanced by the learned counsel for the parties. As per the details furnished in the writ petition it should be evident that the matter was, as it is, getting adjournments on different dates at the stage of not only framing of issues but also after the application was filed by the petitioner for reopening of the evidence. This writ petition itself was filed way back on 3.6.2004 and during all this period, proceedings of the trial court has remained stayed. It is a fact

that as per the provisions contained in Order 17 Rule 1 the plaintiff was required to be given not more than three dates to produce his evidence but at the same time, it cannot be said that the Court in appropriate cases would have no discretion or power to take evidence of the parties by way of affidavits on record if offered to be produced soon thereafter. In the circumstances of the case, the provisions of Section 148 can be invoked by the Court although of course on invalid considerations and for reasons to be stated. But at the same time, the defendants are required to be compensated by way of costs for the inconvenience caused to them on account of the time taken by the petitioner and the opportunity of producing evidence now granted to the petitioner should be

subjected to certain conditions. I, therefore, while allowing the writ petition and setting aside the order dated 13.5.2004 direct the plaintiff petitioner to file all affidavits within four weeks from today and all these affidavits of witnesses which he proposed to produce should be filed at one go. Such affidavits should however be accepted in evidence only upon the plaintiff petitioner paying to the respondents a sum of Rs.3,000/- as costs. It is expected of the trial court to proceed with the cross examination of the said witnesses with the sense of expediency and at the same time the parties are also accepted not to unduly delay the proceedings by taking unnecessary adjournments. The defendant may also produce their evidence by way of

affidavits at one go. The trial court should complete the trial of the case as expeditiously as possible.

With these observations, the writ petition is partly allowed.

(Mohammad Rafiq),J.

RS/-